

OFFICE OF THE ATTORNEY GENERAL



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Maplesville Waterworks and
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Water and Gas Boards -
Employees, Employers,
Employment - Competitive Bid
Law - Equipment - Conflicts
of Interest

Public policy considerations
prohibit the Superintendent
of the Maplesville Water Works
and Gas Board from renting
equipment to that board.

Dear Mr. Latham:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

May the Maplesville Water Works and
Gas Board rent equipment belonging to the
superintendent, an employee of the board,
for an amount equal to or less than the
market rental for such equipment?

FACTS, LAW AND ANALYSIS

The Maplesville Water Works and Gas Board was established under what is now Code of Alabama 1975, § 11-50-230, et seq.

It was stated in your request that the Maplesville Water Works and Gas Board frequently needs equipment to move dirt and to punch conduit under roadways for the installation of water and gas lines. The Superintendent of the Water Works and Gas Board, who is employed by the board, has such equipment and will rent the equipment to the board when the need arises.

Code of Alabama 1975, § 41-16-60 states:

"No member or officer of . . . the governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards and other like utility boards and commissions, shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual service, nor shall any person willfully make any purchase or award any contract in violation of the provisions of this article"

This provision prohibits members or officers of a utility board from contracting with the utility board. Opinion of the Attorney General to John E. Adams, Attorney for the Water Works and Sewer Board of the City of Jackson, dated February 21, 1980, A.G. No. 80-00225.

Article VI, No. 1 of the Bylaws of the Maplesville Water Works and Gas Board states that the officers of the board are the chairman, vice chairman, and secretary. This indicates that the superintendent is not an officer of the board. As an employee of the board, and not an officer or member of the board, the superintendent is not subject to § 41-16-60.

Code of Alabama 1975, § 11-43-12 prohibits an officer or an employee of a municipality from being directly or indirectly interested in any contract, work or business, the price or cost of which is paid from the municipal treasury.

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However, members of utility boards, established as public corporations under specific statutory authority, are not subject to the prohibitions of § 11-43-12. City of Mobile v. Cochran, 270 Ala. 536, 165 So.2d 81 (1964).

However, while the superintendent, as an employee of the Water Works and Gas Board, is not prohibited by statute from renting equipment to the board, public policy considerations dictate that he refrain from doing so. A person's status as a public servant forbids him from placing himself in a position where his private interest conflicts with his public duty. Public policy considerations are to keep the public servant far from temptation so to insure the exercise of unselfish public interest. 63A Am.Jur. 2d, "Public Officers and Employees," § 322. Therefore, public policy dictates that the superintendent not rent equipment to the board which employs him and, thus, receive financial benefit for such rental.

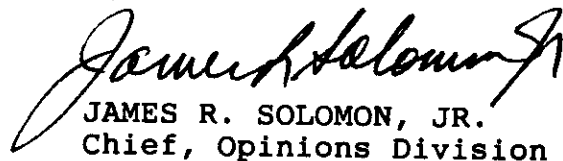
CONCLUSION

Public policy considerations prohibit the Superintendent of the Maplesville Water Works and Gas Board from renting equipment to that board.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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